

Agenda

Item #7



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: May 18, 2010

Re: Appointments to the Commission

At the April 29, 2010 meeting, the Commissioners expressed some reservations concerning the process by which Commissioners are appointed under 1 M.R.S.A. § 1002(1-A). Under this statute, if a vacancy occurs within an unexpired term, the new Commissioner is appointed to complete the unexpired portion of the term. This can be much shorter than the three-year period for a full term. Also, the terms for four of our members expire on April 16, which does not facilitate filling of vacancies during the legislative session.

I did a little thinking about a statutory proposal to amend the statute to make it simpler. I consulted with Commissioner Matheson because of her expertise in legislative drafting.

I have attached:

- A print-out from the Secretary of State showing the terms of current and former Commissioners since 2001.
- Two preliminary alternatives for amending the appointments statute. Any proposal could not be considered until the 2011 legislative session. Under option A, each new member would be appointed to a three-year term, rather than filling the unexpired portion of the previous member's term. Under option B, new members would complete the unexpired portion of a term, but the end-dates of the terms would be shifted to December 31 to facilitate filling vacancies during the legislative session.

Active and Inactive Members													SOS #:	270	MRSA:	1	Section:	1002	TITLE 5:	12004-G	Subsection:	33
Status: A COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES																						
Clerk: PAUL LAVIN													Committee:									
45 MEMORIAL CIRCLE, 2ND FLOOR													Create date: 287-3024									
AUGUSTA ME 04333													Repealed:									
Additional Info: Board terms are staggered. No more than 2 members may be enrolled in the same political party.													No. of members: 5									
Seat: 01 Term: U03 Max Terms: 2 Oath: Y Appointing Authority: GOVERNOR OF MAINE																						
Serves at the pleasure of:													Confirmation Authority: LEGISLATURE									
Seat Information: MEMBER; PERSON MUST BE OF RECOGNIZED JUDGEMENT, PROBITY AND OBJECTIVITY WHO IS NOT A MEMBER OF THE CURRENT OR PREVIOUS LEGISLATURE, IS NOT A DECLARED CANDIDATE FOR ELECTIVE COUNTY, STATE OR FEDERAL OFFICE WITHIN 2 YEARS PRIOR TO APPOINTMENT, DOES NOT HOLD AN ELECTIVE COUNTY, STATE OR FEDERAL OFFICE, IS NOT AN OFFICER OF A POLITICAL COMMITTEE, PARTY COMMITTEE OR POLITICAL ACTION COMMITTEE																						
Seq #: A Status: H													HONORABLE JAMES O. DONNELLY									
													36 ASPEN WAY									
													ME 04412									
Additional Information:																						
Seq #: B Status: H													VINTON E. CASSIDY									
													CARSON ROAD									
													ME 04619									
Additional Information:																						
Seq #: C Status: H													EDWARD YOUNGBLOOD									
													2 ORCHARD HILL PARKWAY									
													ME 04401									
Additional Information:																						
Seq #: D Status: I													EDWARD M. YOUNGBLOOD									
													2 ORCHARD HILLS PARKWAY									
													ME 04401									
Additional Information:																						
Seat: 02 Term: U03 Max Terms: 2 Oath: Y Appointing Authority: GOVERNOR OF MAINE																						
Serves at the pleasure of:													Confirmation Authority: LEGISLATURE									
Seat Information: MEMBER; PERSON MUST BE OF RECOGNIZED JUDGEMENT, PROBITY AND OBJECTIVITY WHO IS NOT A MEMBER OF THE CURRENT OR PREVIOUS LEGISLATURE, IS NOT A DECLARED CANDIDATE FOR ELECTIVE COUNTY, STATE OR FEDERAL OFFICE WITHIN 2 YEARS PRIOR TO APPOINTMENT, DOES NOT HOLD AN ELECTIVE COUNTY, STATE OR FEDERAL OFFICE, IS NOT AN OFFICER OF A POLITICAL COMMITTEE, PARTY COMMITTEE OR POLITICAL ACTION COMMITTEE																						
Seq #: A Status: H													HONORABLE DAVID N. OTT									
													50 LONG SANDS ROAD									
													ME 03909									
Additional Information:																						
Seq #: B Status: H													JEAN GINN MARVIN									
													49 CRANBROOK DRIVE									
													ME 04107									
Additional Information:																						

Active and Inactive Members

Seq #:	C	Status:	I	SOS #:	270	MRSA:	1	Section:	1002	TITLE 5:	12004-G	Subsection:	33
Seq #:	C	Status:	I	FRANCIS MARSANO	88 CONGRESS STREET	BELFAST	ME	04915	Appt:	9/20/2007	Oath:	9/21/2007	FTQ:
									Expire:	4/16/2010	Rsgn:		# of terms 1
Additional Information:													
Seat:	03	Term:	U03	Max Terms:	2	Oath:	Y	Appointing Authority:	GOVERNOR OF MAINE	Confirmation Authority:	LEGISLATURE	Ex Office:	
Serves at the pleasure of:													
Seat Information: MEMBER; PERSON MUST BE OF RECOGNIZED JUDGEMENT, PROBITY AND OBJECTIVITY WHO IS NOT A MEMBER OF THE CURRENT OR PREVIOUS LEGISLATURE, IS NOT A DECLARED CANDIDATE FOR ELECTIVE COUNTY, STATE OR FEDERAL OFFICE WITHIN 2 YEARS PRIOR TO APPOINTMENT, DOES NOT HOLD AN ELECTIVE COUNTY, STATE OR FEDERAL OFFICE, IS NOT AN OFFICER OF A POLITICAL COMMITTEE, PARTY COMMITTEE OR POLITICAL ACTION COMMITTEE													
Seq #:	A	Status:	H	ALAN F. HARDING	5 BARTON STREET	PRESQUE ISLE	ME	04769	Appt:	4/17/2002	Oath:	4/17/2002	FTQ:
									Expire:	4/16/2003	Rsgn:		# of terms
Additional Information:													
Seq #:	B	Status:	H	A. MAVOURNEEN THOMPSON	344 SEASHORE AVENUE	PEAKS ISLAND	ME	04108	Appt:	4/21/2004	Oath:	4/21/2004	FTQ:
									Expire:	4/16/2006	Rsgn:	2/7/2005	# of terms
Additional Information:													
Seq #:	C	Status:	H	MICHAEL T. BIGOS	33 BRAMBLEWOOD ROAD	AUBURN	ME	04210	Appt:	3/24/2005	Oath:	4/6/2005	FTQ:
									Expire:	4/16/2006	Rsgn:		# of terms
Additional Information:													
Seq #:	D	Status:	H	A. MAVOURNEEN THOMPSON	344 SEASHORE AVENUE	PEAKS ISLAND	ME	04108	Appt:	4/28/2006	Oath:	4/28/2006	FTQ:
									Expire:	4/16/2009	Rsgn:		# of terms 1
Additional Information:													
Seq #:	E	Status:	I	ANDRE DUCHETTE	5 ANDROSCOGGIN STREET	BRUNSWICK	ME	04011	Appt:	9/8/2009	Oath:	9/8/2009	FTQ:
									Expire:	4/16/2012	Rsgn:		# of terms 1
Additional Information:													
Seat:	04	Term:	U03	Max Terms:	2	Oath:	Y	Appointing Authority:	GOVERNOR OF MAINE	Confirmation Authority:	LEGISLATURE	Ex Office:	
Serves at the pleasure of:													
Seat Information: MEMBER; PERSON MUST BE OF RECOGNIZED JUDGEMENT, PROBITY AND OBJECTIVITY WHO IS NOT A MEMBER OF THE CURRENT OR PREVIOUS LEGISLATURE, IS NOT A DECLARED CANDIDATE FOR ELECTIVE COUNTY, STATE OR FEDERAL OFFICE WITHIN 2 YEARS PRIOR TO APPOINTMENT, DOES NOT HOLD AN ELECTIVE COUNTY, STATE OR FEDERAL OFFICE, IS NOT AN OFFICER OF A POLITICAL COMMITTEE, PARTY COMMITTEE OR POLITICAL ACTION COMMITTEE													
Seq #:	A	Status:	H	ANDREW KETTERER	10 LANEY ROAD	MADISON	ME	04950	Appt:	4/17/2002	Oath:	4/17/2002	FTQ:
									Expire:	4/16/2004	Rsgn:		# of terms
Additional Information:													

Active and Inactive Members

SOS #: 270 MRSA: 1 Section: 1002 TITLE 5: 12004-G Subsection: 33

Seq #: B Status: H ANDREW KETTERER
33 LANEY ROAD
MADISON ME 04950 Appt: 4/21/2004 Oath: 4/22/2004 FTQ: 4/22/2004
Expire: 4/16/2007 Rsgn: # of terms

Additional Information:

Seq #: C Status: H DAVID SHIAH
17 DUNN FARM LANE
BOWDOINHAM ME 04008 Appt: 5/24/2007 Oath: 6/6/2007 FTQ: 7/28/2008
Expire: 4/16/2010 Rsgn: # of terms 1

Additional Information:

Seq #: D Status: I WALTER F. MCKEE
70 MIDDLE STREET
HALLOWELL ME 04347 Appt: 8/22/2008 Oath: 8/22/2008 FTQ: 8/22/2008
Expire: 4/16/2010 Rsgn: # of terms 1

Additional Information:

Seat: 05 Term: U03 Max Terms: 2 Oath: Y Appointing Authority: GOVERNOR OF MAINE

Serves at the pleasure of Ex Office: Confirmation Authority: LEGISLATURE

Seat Information: MEMBER; PERSON MUST BE OF RECOGNIZED JUDGEMENT, PROBITY AND OBJECTIVITY WHO IS NOT A MEMBER OF THE CURRENT OR PREVIOUS LEGISLATURE, IS NOT A DECLARED CANDIDATE FOR ELECTIVE COUNTY, STATE OR FEDERAL OFFICE WITHIN 2 YEARS PRIOR TO APPOINTMENT, DOES NOT HOLD AN ELECTIVE COUNTY, STATE OR FEDERAL OFFICE, IS NOT AN OFFICER OF A POLITICAL COMMITTEE, PARTY COMMITTEE OR POLITICAL ACTION COMMITTEE

Seq #: A Status: H TERRENCE J. MACTAGGART
101 SIDNEY BLVD.
HAMPDEN ME 04444 Appt: 10/5/2002 Oath: 10/7/2002 FTQ: 6/1/2005
Expire: 10/4/2003 Rsgn: # of terms

Additional Information:

Seq #: B Status: H MICHAEL P. FRIEDMAN
57 KIRA DRIVE
BANGOR ME 04401 Appt: 9/15/2006 Oath: 9/19/2006 FTQ: 9/19/2006
Expire: 10/4/2006 Rsgn: # of terms 1

Additional Information:

Seq #: C Status: H MICHAEL P. FRIEDMAN
PO BOX 1401
BANGOR ME 04402 Appt: 5/24/2007 Oath: 5/31/2007 FTQ: 5/31/2007
Expire: 10/4/2009 Rsgn: # of terms 2

Additional Information:

Seq #: D Status: I MARGARET E. MATHESON
10 CEDAR STREET
AUGUSTA ME 04330 Appt: 1/26/2010 Oath: 1/27/2010 FTQ: 1/27/2010
Expire: 10/4/2012 Rsgn: # of terms 1

Additional Information:

**OPTION A –
COMMISSIONERS SERVE NEW 3-YEAR TERM UPON APPOINTMENT**

1 § 1002. Commission on Governmental Ethics and Election Practices

1. Membership. (REPEALED)

~~1-A. **Membership.** The Commission on Governmental Ethics and Election Practices, established by Title 5, section 12004-G, subsection 33 and referred to in this chapter as the "commission," consists of five members appointed as follows.~~

- ~~—— A. By December 1, 2001 and as needed after that date, the appointed leader from each political party in the Senate and the appointed leader from each political party in the House of Representatives jointly shall establish and advertise a 30-day period to allow members of the public and groups and organizations to propose qualified individuals to be nominated for appointment to the commission.~~
- ~~—— B. By January 1, 2002 and as needed after that date, the appointed leader from each political party in the Senate and the appointed leader from each political party in the House of Representatives each shall present a list of three qualified individuals to the Governor for appointment of four (4) members to the commission. The appointed leadership from each party in both bodies of the Legislature jointly shall present a list of three qualified individuals to the Governor for appointment of a fifth member to the commission.~~
- ~~—— C. By March 15, 2002, the Governor shall appoint the members of the commission selecting one member from each of the lists of nominees presented in accordance with paragraph A. These nominees are subject to review by the joint standing committee of the Legislature having jurisdiction over legal affairs and confirmation by the Legislature. No more than two (2) commission members may be enrolled in the same party.~~
- ~~—— D. Two initial appointees are appointed for one-year terms, two are appointed for two-year terms and one is appointed for a three-year term, according to a random lot drawing under the supervision of the Secretary of State. Subsequent appointees are appointed to serve three-year terms. A person may not serve more than two terms.~~
- ~~—— E. The commission members shall elect one member to serve as chair for at least a two-year term.~~
- ~~—— F. Upon a vacancy during an unexpired term, the term must be filled as provided in this paragraph for the unexpired portion of the term only. The nominee must be appointed by the Governor from a list of three (3) qualified candidates provided by the leader of the party from the body of the Legislature that suggested the appointee who created the vacancy. If the vacancy during an unexpired term was created by the commission member who was appointed from the list of candidates presented to the Governor by the leaders of each party of each body of the Legislature jointly, the nominee must be appointed from a list of three (3)~~

qualified candidates provided jointly by the leaders of each party of each body of the Legislature. If the list of three (3) qualified candidates required by this paragraph to be presented to the Governor by the leaders of each party from each body of the Legislature is not produced within 60 days after the vacancy is created, then the leaders of each party from both bodies of the Legislature shall present within the subsequent 15 days a separate list of three (3) qualified candidates to the Governor, who shall appoint a candidate from these lists within 30 days of receiving the lists. Nominees appointed pursuant to this paragraph are subject to review by the joint standing committee of the Legislature having jurisdiction over election practices and legislative ethics and to confirmation by the Legislature.

~~G. Upon a vacancy created by an expired term, the vacancy must be filled as provided in this paragraph. The nominee must be appointed by the Governor from a list of three (3) qualified candidates provided by the leader of the party from the body of the Legislature that suggested the appointee whose term expired. When a vacancy is created by an expired term of the commission member who was appointed from the list of candidates presented to the Governor by the leaders of each party of each body of the Legislature jointly, the nominee must be appointed from a list of three (3) qualified candidates provided jointly by the leaders of each party of each body of the Legislature. If the list of three (3) qualified candidates required by this paragraph to be presented to the Governor by the leaders of each party from each body of the Legislature is not produced within 60 days after the vacancy is created, then the leaders of each party from both bodies of the Legislature shall present within the subsequent 15 days a separate list of three (3) qualified candidates to the Governor, who shall appoint a candidate from these lists within 30 days of receiving the lists. Nominees appointed pursuant to this paragraph are subject to review by the joint standing committee of the Legislature having jurisdiction over election practices and legislative ethics and to confirmation by the Legislature.~~

~~H. For the purposes of this subsection, "political party" has the same meaning as "party" as defined by Title 21-A, section 1, subsection 28.~~

1-B. Membership. The Commission on Governmental Ethics and Election Practices, established by Title 5, section 12004-G, subsection 33 and referred to in this chapter as the "commission," consists of five members appointed by the Governor from lists of three potential nominees presented by the leaders of the political parties within the Legislature as follows.

A For four members of the commission, each position is aligned with one of the following 4 authorities who shall present a list of 3 nominees to the Governor:

1. The appointed Senate leader of the political party having the greatest number of members in the Senate;
2. The appointed Senate leader of the political party having the second greatest number of members in the Senate;

3. The appointed House leader of the political party having the greatest number of members in the House of Representatives; and

4. The appointed House leader of the political party having the second greatest number of members in the House of Representatives.

When one of these 4 positions on the commission becomes vacant, the leader of the political party from the body of the Legislature that suggested the member of the commission who previously held that position shall submit a list of three qualified candidates to the Governor.

B. For the fifth position on the commission, the appointed leadership from the 2 political parties having the greatest number of members in both bodies of the Legislature jointly shall present a list of three qualified individuals to the Governor. When a vacancy occurs in this 5th position, if the leaders do not jointly present a list to the Governor within 60 days after the vacancy is created, then the leaders of each political party from both bodies of the Legislature shall present within the subsequent 15 days a separate list of three qualified candidates to the Governor.

C. The political party leaders may advertise for a 30-day period to allow members of the public to propose qualified individuals to be nominated for appointment to the commission. If the party leaders advertise for the fifth position, the 60-day period in paragraph B for joint presentation of a list is extended to 90 days.

D. The Governor shall appoint the members of the commission by selecting one member from the lists of nominees presented in accordance with paragraphs A and B. These nominees are subject to review by the joint standing committee of the Legislature having jurisdiction over legal affairs and confirmation by the Legislature.

E. The term of office of each member of the commission is 3 years and the term begins when the member is sworn into office. Except as provided in this paragraph, a person may not serve more than two terms. Continued service by a member whose term has expired and for whom a successor has not been appointed pursuant to paragraph D is not considered a term for purposes of the term limitation in this paragraph if the continued service is for nine or fewer months; except that, if that member is reappointed, that continued service is included in the calculation of the commissioner's second term.

F. No more than two commission members may be enrolled in the same party.

G. The commission members shall elect one member to serve as chair. No member may serve as chair for more than 3 consecutive years.

H. For the purposes of this subsection, "political party" has the same meaning as "party" as defined by Title 21-A, section 1, subsection 28.

**OPTION B –
COMMISSIONERS FILL UNEXPIRED PORTION OF TERM –
MOVE END DATE TO DECEMBER 31**

1 § 1002. Commission on Governmental Ethics and Election Practices

1. Membership. (REPEALED)

~~**1-A. Membership.** The Commission on Governmental Ethics and Election Practices, established by Title 5, section 12004-G, subsection 33 and referred to in this chapter as the "commission," consists of five members appointed as follows:~~

- ~~—— A. By December 1, 2001 and as needed after that date, the appointed leader from each political party in the Senate and the appointed leader from each political party in the House of Representatives jointly shall establish and advertise a 30-day period to allow members of the public and groups and organizations to propose qualified individuals to be nominated for appointment to the commission.~~
- ~~—— B. By January 1, 2002 and as needed after that date, the appointed leader from each political party in the Senate and the appointed leader from each political party in the House of Representatives each shall present a list of three qualified individuals to the Governor for appointment of four (4) members to the commission. The appointed leadership from each party in both bodies of the Legislature jointly shall present a list of three qualified individuals to the Governor for appointment of a fifth member to the commission.~~
- ~~—— C. By March 15, 2002, the Governor shall appoint the members of the commission selecting one member from each of the lists of nominees presented in accordance with paragraph A. These nominees are subject to review by the joint standing committee of the Legislature having jurisdiction over legal affairs and confirmation by the Legislature. No more than two (2) commission members may be enrolled in the same party.~~
- ~~—— D. Two initial appointees are appointed for one-year terms, two are appointed for two-year terms and one is appointed for a three-year term, according to a random lot drawing under the supervision of the Secretary of State. Subsequent appointees are appointed to serve three-year terms. A person may not serve more than two terms.~~
- ~~—— E. The commission members shall elect one member to serve as chair for at least a two-year term.~~
- ~~—— F. Upon a vacancy during an unexpired term, the term must be filled as provided in this paragraph for the unexpired portion of the term only. The nominee must be appointed by the Governor from a list of three (3) qualified candidates provided by the leader of the party from the body of the Legislature that suggested the appointee who created the vacancy. If the vacancy during an unexpired term was created by the commission member who was appointed from the list of candidates presented to the Governor by the leaders of each party of each body of~~

~~the Legislature jointly, the nominee must be appointed from a list of three (3) qualified candidates provided jointly by the leaders of each party of each body of the Legislature. If the list of three (3) qualified candidates required by this paragraph to be presented to the Governor by the leaders of each party from each body of the Legislature is not produced within 60 days after the vacancy is created, then the leaders of each party from both bodies of the Legislature shall present within the subsequent 15 days a separate list of three (3) qualified candidates to the Governor, who shall appoint a candidate from these lists within 30 days of receiving the lists. Nominees appointed pursuant to this paragraph are subject to review by the joint standing committee of the Legislature having jurisdiction over election practices and legislative ethics and to confirmation by the Legislature.~~

~~— G. Upon a vacancy created by an expired term, the vacancy must be filled as provided in this paragraph. The nominee must be appointed by the Governor from a list of three (3) qualified candidates provided by the leader of the party from the body of the Legislature that suggested the appointee whose term expired. When a vacancy is created by an expired term of the commission member who was appointed from the list of candidates presented to the Governor by the leaders of each party of each body of the Legislature jointly, the nominee must be appointed from a list of three (3) qualified candidates provided jointly by the leaders of each party of each body of the Legislature. If the list of three (3) qualified candidates required by this paragraph to be presented to the Governor by the leaders of each party from each body of the Legislature is not produced within 60 days after the vacancy is created, then the leaders of each party from both bodies of the Legislature shall present within the subsequent 15 days a separate list of three (3) qualified candidates to the Governor, who shall appoint a candidate from these lists within 30 days of receiving the lists. Nominees appointed pursuant to this paragraph are subject to review by the joint standing committee of the Legislature having jurisdiction over election practices and legislative ethics and to confirmation by the Legislature.~~

~~— H. For the purposes of this subsection, "political party" has the same meaning as "party" as defined by Title 21-A, section 1, subsection 28.~~

1-B. Membership. The Commission on Governmental Ethics and Election Practices, established by Title 5, section 12004-G, subsection 33 and referred to in this chapter as the "commission," consists of five members appointed by the Governor from lists of three potential nominees presented by the leaders of the political parties within the Legislature as follows.

A For four members of the commission, each position is aligned with one of the following 4 authorities who shall present a list of 3 nominees to the Governor:

1. The appointed Senate leader of the political party having the greatest number of members in the Senate;

2. The appointed Senate leader of the political party having the second greatest number of members in the Senate;

3. The appointed House leader of the political party having the greatest number of members in the House of Representatives; and

4. The appointed House leader of the political party having the second greatest number of members in the House of Representatives.

When one of these 4 positions on the commission becomes vacant, the leader of the political party from the body of the Legislature that suggested the member of the commission who previously held that position shall submit a list of three qualified candidates to the Governor.

B. For the fifth position on the commission, the appointed leadership from the 2 political parties having the greatest number of members in both bodies of the Legislature jointly shall present a list of three qualified individuals to the Governor. When a vacancy occurs in this 5th position, if the leaders do not jointly present a list to the Governor within 60 days after the vacancy is created, then the leaders of each political party from both bodies of the Legislature shall present within the subsequent 15 days a separate list of three qualified candidates to the Governor.

C. The political party leaders may advertise for a 30-day period to allow members of the public to propose qualified individuals to be nominated for appointment to the commission. If the party leaders advertise for the fifth position, the 60-day period in paragraph B for joint presentation of a list is extended to 90 days.

D. The Governor shall appoint the members of the commission by selecting one member from the lists of nominees presented in accordance with paragraphs A and B. These nominees are subject to review by the joint standing committee of the Legislature having jurisdiction over legal affairs and confirmation by the Legislature.

E. The term of office of each member of the commission is 3 years and the term begins when the member is sworn into office. Except as provided in this paragraph, a person may not serve more than two terms. Upon a vacancy during an unexpired term, the term must be filled for the unexpired portion of the term only. Appointment under paragraph D to fill a vacancy during an unexpired term is not considered a term for purposes of the term limitation in this paragraph if the appointment is for four or fewer months.

F. No more than two commission members may be enrolled in the same party.

G. The commission members shall elect one member to serve as chair. No member may serve as chair for more than 3 consecutive years.

H. For the purposes of this subsection, "political party" has the same meaning as "party" as defined by Title 21-A, section 1, subsection 28.

Unallocated language

Section x. Commission on Governmental Ethics and Election Practices term expiration dates. Notwithstanding the Maine Revised Statutes, Title 1, section 1002, subsection 1-A, terms for members on the Commission on Governmental Ethics and Election Practices expire December 31. A member serving on the commission on the effective date of this act continues to serve until December 31 following the expiration of the term for which the member was appointed.